



**Rules and Ancillary Document Review Checklist**  
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-189---Sales to and by the state of Washington, counties, cities, towns, school districts, and fire districts.**

Date last adopted: **December 6, 1995**

Reviewer: **Sally Giza**

Date review completed: **June 14, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If "YES", provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). YES ☐ NO ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Explain the goal(s) and purpose(s) of the document:**

**Rule 189 explains the application of Washington's B&O, public utility, and retail sales taxes to sales to and by the state of Washington, municipal corporations and related public service enterprises.**

**2. Need:**

YES	NO	
<b>X</b>		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	<b>X</b>	Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
<b>X</b>		Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
<b>X</b>		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)

Please explain.

**Rule 189 provides useful tax-reporting information that reduces the need for taxpayers or Department personnel to research multiple documents to determine the appropriate tax liability of the state of Washington, counties, cities, towns, school districts, and fire districts.**



This rule also provides tax-reporting information for entities selling to government units. It also defines “public service business” and “enterprise activity”.

The rule should be revised to incorporate the following legislation:

- Chapter 63, Laws of 1996—This legislation provided exemptions for the sale and use of copied public records by state and local agencies; and
- Chapter 182, Laws of 1998—This legislation extended the use tax exemption provided by RCW 82.12.02595 to:
  - The subsequent use by a person to whom the property is subsequently donated or bailed if used in the furtherance of the purpose for which the property was originally donated; and
  - To the donor of the property.

**3. Related ancillary documents, court decisions, BTA decisions, and WTDs: Complete**

Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
X		Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
X		Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?



If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**ETA 035.04.189 explains that income from a ferry terminal parking lot is subject to the retailing B&O and retail sales taxes, even though the driveways through the parking lot are city streets. This document should be retained at this time and the information possibly incorporated into Rule 189 when the rule is revised.**

**ETA 192.04.189 explains that nonprofit agricultural organizations composed of farmers working closely with governmental units are not entitled to the-B&O tax exemption provided to state and federal entities.**

**This document should be repealed.**

- **The taxability of entities (no distinction between profit and nonprofit) doing business with state and federal agencies is addressed in Rule 189 and Rule 190, respectively.**
- **ETA 192 is in part incomplete. It fails to recognize chapter 200, Laws of 1998 (codified as RCW 82.04.338), which provides a B&O tax exemption under certain circumstances to nonprofit organizations working with the Hop Commodity Commission of Washington.**

**4. Clarity and Effectiveness:**

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain.

**Rule 189 is clear, concise, and it achieves the results originally designed to achieve. It should nonetheless be revised to incorporate subsequent legislation as described in #2. When revised, some of the current references to effective dates of legislation (and prior reporting instructions) can be removed because these dates are outside the nonclaim period provided by RCW 82.32.050.**

**5. Intent and Statutory Authority:**

YES	NO	
X		Does the Department have sufficient authority <b>to adopt</b> this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed <b>to implement</b> ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9,



		below.)
	<b>X</b>	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain.

**RCW 82.32.300 Authorizes the Department to adopt and publish rules to explain the provisions of the Revenue Act.**

**6. Coordination:** Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	<b>X</b>	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

**The Department is solely responsible for administering the business and occupation (B&O, retail sales, and use taxes in these areas.**

**7. Cost:** When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	<b>X</b>	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

**These are interpretive rules that impose no new or additional administrative burdens on taxpayers that are not imposed by law.**

**8. Fairness:** When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
<b>X</b>		Does the document result in equitable treatment of those required to comply with it?
	<b>X</b>	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	<b>X</b>	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

**9. LISTING OF DOCUMENTS REVIEWED:** (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

- **9WTD286-79 – “Enterprise activity – Governmental activity – Animal control”;**
- **9WTD286-79 – “Retail sales tax – Governmental activity – Animal control – Adoption**
- **10WTD332 – “Public utility tax – Taxicabs – Urban transportation”;**



- **17WTD278 – “Public Road construction – “Mass public transportation terminals and parking facilities” – Port district – Airport”;** and
- **17WTD402 – “Refuse or solid waste collection business – Political subdivisions –**

Attorney General’s Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **96-Q4 – “Parking using metered parking on county/city owned streets – not taxable”.**

**10. Review Recommendation:**

☒ Amend

☐ Repeal

☐ Leave as is

☐ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)

☐ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

**Explanation of recommendation:** (If recommending an amendment of an existing rule, provide only a brief summary of the changes you’ve identified/recommended earlier in this review document.) **Rule 189 should be revised to incorporate chapter 63, Laws of 1996, and chapter 200, Laws of 1998. This revision is a candidate for the expedited adoption process.**

**11. Manager action:** Date: \_\_\_\_\_

☐ Reviewed recommendation      ☐ Accepted recommendation

☐ Returned for further action

Comments: